

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH DAKOTA**

Mitchell S. Sanderson
Petitioner

Case Number: _____

On Petition for Writ of Quo Warranto to the United States District Court Eastern District of
North Dakota

PETITION FOR WRIT OF QUO WARRANTO

Submitted by Mitchell S. Sanderson

I.

JURISDICTIONAL STATEMENT

1. All Courts have jurisdiction over this petition pursuant to *28 U.S. Code § 1651* as it seeks a writ of quo warranto from the Federal District Court for the District of North Dakota, regarding individuals elected or appointed to an office of honor or profit in the civil or uniformed services. Also, under *NDCC 32-13-01. 32-13-03*. Who may bring action against usurping officer. An action may be commenced by the state, or any person who has a special interest in the action, against the parties offending in the following cases: 1. When any person shall usurp, intrude into, or unlawfully hold or exercise any public office.
2. The Supremacy Clause of the US Constitution demands that this Court and its lower courts enforce these laws:

NDCC 44-01-05. Oath of civil officers. *Each civil officer in this state before entering upon the duties of that individual's office shall take and subscribe the oath prescribed in section 4 of article XI of the Constitution of North Dakota. The oath must be endorsed upon the back of, or attached to, the commission, appointment, or certificate of election. The term civil officer includes every elected official and any individual appointed by such elected official; any individual appointed by the governor and required by section 16.1-09-02 to file a statement of interests with the secretary of state; appointed member of any state authority, board, bureau, commission, and council; and the appointed head of any state agency and agency division, whether the individual serves with or without compensation. Except for an individual appointed to fill a vacancy existing in the legislative assembly, the term does not include any individual receiving a legislative appointment. For purposes of this chapter and chapter 44-05, the term civil officer has the same meaning as public officer.*

NDCC 44-01-05.1. Failure to file oath. *The appointment of any civil officer may be rescinded by the appointing authority if the appointed civil officer fails to file an oath of office at the place of filing required by section 44-05-04.*

Article XI ND Constitution Section 4. *Members of the legislative assembly and the executive and judicial branches, except such inferior officers as may be by law exempted, before they enter on the duties of their respective offices, shall take and subscribe the following oath or affirmation:*

28 U.S. Code § 951 - Oath of office of clerks and deputies: *Each clerk of court and his deputies shall take the following oath or affirmation before entering upon their duties: "I, _____, having been appointed _____, do solemnly swear (or affirm) that I will truly and faithfully enter and record all orders, decrees, judgments and proceedings of such court, and will faithfully and impartially discharge all other duties of my office according to the best of my abilities and understanding. So help me God."*

Article VI of the US Constitution says, *"The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States."* The Constitution does not prescribe the actual text of the Article VI oaths. For federal civil service employees, the oath is set forth by law in 5 U.S. Code § 3331, which reads as follows: *"An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed*

services, shall take the following oath: "I, ___, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

II.

RELIEF SOUGHT

3. Pursuant to 28 U.S.C. §1651, Petitioner, Mitchell S. Sanderson ("Sanderson"), respectfully petitions the United States District Court District of North Dakota for a Writ of Quo Warranto regarding the legitimacy of authority of the following persons: Walsh County District Clerk of Court. The Clerk has no Oath of Office in violation of the law.

4. The Clerk who has failed or refused to produce an affidavit as required by 5 U.S. Code § 3332, demand that the Walsh County Clerk of Court provide the US Attorney and this Court with the compulsory affidavit within ten (10) days.

5. If the Clerk does not produce the 5 U.S. Code § 3332 affidavit within ten (10) days as described above; the Clerk has admitted she does not have one and, she does not possess the requisite Oath and affidavit and that she does not need one: See **Exhibit "A"**

- a. Immediately terminate their appointments or positions.
- b. Render all official acts, bills, laws, regulations, or any official actions whatsoever, including the appointment of any subordinates void ab initio and;
- c. Replace and restore all proper, former office holders until competent replacements can be lawfully appointed.

III.

ISSUES PRESENTED

6. 5 U.S. Code § 3331 - Oath of office, states:

*An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, **shall take the following oath**: “I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.”*

7. Concordantly, 5 U.S. Code § 3332 - Officer affidavit; no consideration paid for appointment states:

An officer, within 30 days after the effective date of his appointment, shall file with the oath of office required by section 3331 of this title an affidavit that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing the appointment.

8. In order for any Affidavit, including an Affidavit in support of a person’s Oath of Office, it must be sworn to which include specific provisions requiring allegiance to the Nation and office they hold in support of the Nation which contains, inter alia, the following language from the form Appointment Affidavit, which states in relevant part:

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof . . .

9. In order to be effective as a sworn declaration, it must either be sworn before a notary public or sworn under penalty of perjury per 18 U.S. Code § 1746, which requires:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form: (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)"

10. The issue before this Court is straightforward: Petitioner has sought the required affidavits prescribed in 5 U.S. Code § 3332 from all appointees referenced via the Open Records Request and *the aforesaid appointee has not produced a compliant affidavit consistent with the applicable statutes*. Either the affidavit is nonexistent, wanting, defective or the appointee has failed or refuses to provide the mandated affidavit to hold their respective offices. In fact, the Clerk clearly states she does not need an Oath of Office!

11. *5 U.S. Code § 3332 is nondiscretionary and mandatory*; yet the aforementioned appointee has not complied with or fulfilled their oath obligation to hold their respective offices or appointments. For the reasons provided, Petitioner respectfully requests the this Court to issue a Writ of Quo Warranto and enforce the relief sought for the individual referenced, as the legitimacy to hold the Clerks respective positions or offices are demonstrably in question.

IV.

STATEMENT OF FACTS

Re: Bev Demers (Clerk of Court Walsh County)

12. On May 5, 2023, Petitioner submitted an Open Records requesting a signed copy of Walsh County Clerk of Court's Oath of Office. To date, Petitioner has yet to receive a signed copy of Bev Demer's mandatory 5 U.S. Code § 3332 Oath of Office affidavit. *See Exhibit "A"* for all communication exchanges. She in fact states she does not need one!

Summations

13. In summary of the foregoing and for ease of reference per below, Petitioner sought the production of the compulsory affidavits that the Walsh Clerk of Court has a proper Oath of Office' allegiance to the Constitution and commitment that all official acts conducted by them could potentially subject them to Treason for failure of adherence.

Tucker's Blackstone Vol. 1 Appendix Note B [Section 3] 1803 - If in a limited government the public functionaries exceed the limits which the constitution prescribes to their powers, every such act is an act of usurpation in the government, and, as such, treason against the sovereignty of the people.

The Open Record responses (or lack thereof) are listed below categorized by the Clerk's noncompliance or defects:

14. **Bev Demers** – States she is appointed and does not need an Oath of Office!

V.

REASONS THE WRIT SHOULD ISSUE

15. A petition for quo warranto is an appropriate method of determining whether a person is eligible to the office or position to which the individual was appointed or elected. *Newman v. U.S. of Am. ex rel. Frizzell*, 238 U.S. 537, 544–46 (1915). The purpose of bringing a writ of quo warranto is to correct an improper appointment or election; and ultimately to achieve the ouster of the person who is illegally occupying a public office. *Ames v. State of Kansas*, 111 14. U.S. 449, 4 S. Ct. 437, 28 L. Ed. 482 (1884). Stated differently, it is used to question the authority of an individual asserting a right and title to a public office or appointment; and intended to prevent or challenge the exercise of those powers that are not conferred by law. *Sibley v. Obama*, 866 F. Supp. 2d 17 (D.D.C. 2012), *aff'd*, 2012 WL 6603088 (D.C. Cir. 2012); *Sierra Club v. Castle & Cooke Homes Hawaii, Inc.*, 132 Haw. 184, 320 P.3d 849 (2013).

The United States Constitution is clear that:

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof.

U.S. Const. amend. XIV, § 3. This necessarily implies that oaths must be taken as required by 5 U.S. Code § 3331:

*An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, **shall** take the following oath: “I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic...*

and 5 U.S. Code § 3332:

*An officer, within 30 days after the effective date of his appointment, **shall file** with the oath of office required by section 3331 of this title an affidavit that neither he nor anyone acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing the appointment.*

16. U.S. Codes § 3331 and § 3332 are unambiguous: “An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, **shall** take the following oath...” [and] “An officer, within 30 days after the effective date of his appointment, **shall** file with the oath of office required by *section 3331* of this title an affidavit...” Precedence clearly shows that the use of the word “**shall**” in a statute creates a mandatory duty. *See e.g., Appalachian Voices v. McCarthy*, 989 F. Supp. 2d 30, 54 (D.D.C. 2013); *See also Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 171–72, 136 S. Ct. 1969, 1977, 195 L. Ed. 2d 334 (2016) (“Unlike the word ‘may’, which implies discretion, the word “**shall**” usually connotes a requirement. Compare *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35,

118 S.Ct. 956, 140 L.Ed.2d 62 (1998) (recognizing that “shall” is ‘mandatory’ and normally creates an obligation impervious to judicial discretion.”)

17. Simply put: the individual referenced in this petition has not satisfied her Constitutional obligations or has adhered to 5 U.S. Code § 3332 thereby nullifying, or at a minimum, calls into question the legitimacy of her appointment or position. Since this appointee referenced has not produced a compliant, mandatory Oath of Office affidavit, it follows that the Petitioner has established a prima facie case for the issuance of a writ of quo warranto based upon the Open Records requests and the individuals’ responses to same. In turn, the burden now shifts to the respondent-appointee to prove Petitioner otherwise; and to produce the affidavit as required by law. See e.g., *Ford v. Leithead-Todd*, 139 Haw. 129, 384 P.3d 905 (Ct. App. 2016); *People ex rel. Lacey v. Robles*, 44 Cal. App. 5th 804, 258 Cal. Rptr. 3d 97 (2d Dist. 2020).

18. 18 U.S.C. 1918 provides penalties for violation of oath office described in 5 U.S.C. 7311 (2) which include: removal from office *Frothingham v. Mellon*, 262 U.S. 447 (1923), "Jurisdiction can be challenged at any time." *Basso v. Utah Power & Light Co.*, 495 F 2nd 906 at 910. In this matter the Clerk has no Oath which is a violation of law in itself! She is waring against the Constitution which is no different than advocating the overthrow of our Constitutional government!

19. "Where there is absence of proof of jurisdiction, all administrative and judicial proceedings are a nullity, and confer no right, offer no protection, and afford no justification, and may be rejected upon direct collateral attack." *Thompson v Tolmie*, 2 Pet. 157, 7 L. Ed. 381; and *Griffith v. Frazier*, 8 Cr. 9, 3 L. Ed. 471. "the burden of proving jurisdiction rests upon the party asserting it." *Bindell v. City of Harvey*, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991).

20. Quo Warranto is a Latin term that translates to ‘By what authority or warrant’ in English. It refers to a legal action or writ that challenges a person’s right to hold a public office, the writ of quo warranto protects citizens from the holder of a public office to which she has no right and calls

upon the public office's holder to show under what authority or warrant he is holding the office in question. Its primary scope is to challenge the authority of an individual to hold a public office, position, or franchise whereas the same must have been created by the Constitution. If the court determines that the person holding the office lacks the necessary authority or qualifications, the court may declare the office vacant or order the person to cease exercising the powers associated with the office. The Clerk being unlawfully occupied and abusing her authority by allowing a case to come before the court without proper service. Moreover, private individuals who have a direct interest in the matter may also be allowed to file a Writ of Quo Warranto. This could include individuals who believe that a public office or position is being unlawfully held or that its powers are being misused. The petitioner must have legal standing, which means they must have a direct and personal interest in the matter. In this matter Sanderson is a Plaintiff in the Walsh County Court and the Clerk had no legal authority to even accept cases to be heard by the Court much less be incompetent and allow a case to be accepted without proper service! Generally, this means that the petitioner must show that they have a specific legal right that has been affected or they have suffered direct harm as a result of the alleged unlawful occupancy or abuse of authority. Sanderson is being harmed by a judge that is not following rules of Court and state, federal and Constitutional law. Sanderson is also being harmed by the judge not following ND Supreme Court, persuasive federal court case law and US Supreme Court Case law! The Court or authority in which the writ is filed must have jurisdiction over the subject matter and the parties involved. The jurisdictional requirements may vary depending on the nature of the office or position being challenged and the applicable laws. The petitioner must provide sufficient evidence to support their claim and allegations. This may include documents, affidavits, witness statements, or any other relevant evidence that demonstrates the lack of authority, usurpation, abuse of power, or disqualification of

the person holding the office or position. **Exhibit “A”** shows that the Clerk admits she has no Oath of Office and does not need one!

a. Lack of Eligibility: The person holding the office may be challenged on the grounds that they do not meet the eligibility criteria required by law. This could include factors such as age, citizenship, residency, or any other qualifications prescribed for the office.

b. Abuse of Authority: If the person holding the office is accused of abusing their powers or acting beyond the scope of their authority, a writ of quo warranto may be sought to challenge their right to continue in that office.

c. Usurpation: The writ can be filed if it is alleged that the person holding the office has usurped it or unlawfully taken it without proper authority.

If there are violations of statutes or laws governing the appointment of tenure of the office and the same violates constitutional provisions they have been directly affected by the alleged unlawful occupancy or abuse of authority.

21. Ex parte Garland, 71 U.S. (4 Wall.) 333, 337 (1867) "Any person who shall falsely take the said oath shall be guilty of perjury; and, on conviction, in addition to the penalties now prescribed for that offence, shall be deprived of his office, and rendered incapable forever after of holding any office or place under the United States. NDCC 44-01-05, NDCC 44-01-05.1, 28 U.S. Code § 951 - Oath of office of clerks and deputies, 5 U.S. Code § 3331, Article XI ND Constitution Section 4, Article VI of the US Constitution. In this matter the Clerk has no Oath and falsely taken this office!

22. As Marbury v. Madison put it, our government would no longer deserve to be “termed a government of laws, and not of men ... if the laws furnish no remedy for the violation of a vested legal right.” It also states that an Unconstitutional act is unenforceable. Since a Clerk needs an

Oath according to the ND and US Constitution this case and all its filings and Rulings are null and void and any other case she was involved in as Clerk!

23. *Section 27-05.2-07 - Penalty for neglect of duty:* If an ex officio clerk of the district court violates the clerk's oath of office or neglects or refuses to perform any of the duties of office and any person is injured or aggrieved by such violation or neglect, such person may institute legal proceedings upon the bond of the clerk and recover double the amount of damages actually sustained. For each such violation or neglect by the clerk, the county treasurer shall collect a forfeiture of not less than fifty dollars.

CONCLUSION

24. Indeed, while writs are extraordinary remedies, this petition has demonstrated that there are uncontroverted, substantial pertinent facts that show the Petitioner is entitled to the requested relief; and a peremptory writ of quo warranto ought to be sought and issued along with the relief requested. If this Court ignores all the legal arguments in this matter, it is willfully participating in the violations of Constitutional law and it's own Oath of Office.

Respectfully Submitted,



Mr. Mitchell S. Sanderson
214 Sandwood Circle
Park River, ND 58270
701-331-0410
mitchell_sanderson@hotmail.com